

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
GMO GAMECENTER USA, INC. et al, : Docket #1:22-cv-05974-
 : JPC-KHP
 :
 Plaintiffs, :
 :
 - against - :
 :
 WHINSTONE US, INC., : New York, New York
 : December 13, 2022
 :
 Defendant. :
 : STATUS CONFERENCE
 ----- :
 :

PROCEEDINGS BEFORE
THE HONORABLE KATHARINE H. PARKER,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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2 THE CLERK: Calling case 22-civil-5974, GMO
3 Gamecenter USA vs. Whinstone US.

4 Beginning with counsel for the plaintiff, please
5 make your appearance for the record.

6 MS. LESLIE C. THORNE: Leslie Thorne for the
7 plaintiffs.

8 THE CLERK: And counsel for the defendant?

9 MR. ROBERT A. SCHER: For defendant, Robert Scher.
10 Good afternoon, your Honor.

11 HONORABLE KATHARINE H. PARKER (THE COURT): All
12 right, good afternoon. Thank you, all, for coming in.
13 Nice to see you.

14 So, I wanted to get an update on where you are on
15 discovery, any issues that have arisen or that you may
16 anticipate. And let's start with plaintiffs' counsel.

17 MS. THORNE: We have our first set of discovery
18 responses due tomorrow. And so we have not run into any
19 issues yet. We are in sort of the final stages of
20 negotiating a confidentiality order that's based on your
21 Honor's order, with just a few changes to fit it to the
22 case. But I don't anticipate any problems in that area.

23 We also anticipate working over the next couple of
24 weeks to work on an ESI protocol. But so far we've worked
25 well together, so I don't anticipate any issues there.

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THE COURT: Okay. Good. And with the ESI protocol, I guess let me -- do you anticipate any issues with that ESI protocol?

MS. THORNE: I don't think so.

THE COURT: No. Okay.

MS. THORNE: We have spoken and decided to -- we're exchanging some documents that are sort of easily accessible and all that in the first -- in the first round.

THE COURT: Right.

MS. THORNE: But we anticipate talking through some custodians and search terms that might make sense. At this point, I don't anticipate any major issues there.

THE COURT: All right, good. I just was at some conferences talking about ESI protocols, and it occurred to me that it might be more efficient for the parties to perhaps approach an ESI protocol as a more iterative type of document. Just once you're informed with the exchange of some information -- I'm glad you're exchanging some documents -- you might be able to hone in on how you want to search further in a more efficient way. So I just ask that, as you're negotiating it, think about how to be most efficient. That's going to be in both parties' interests.

MS. THORNE: Certainly, your Honor.

THE COURT: Okay. Good. And from defendant's

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perspective, where are you?

MR. SCHER: Nothing to add. Ms. Thorne and I had an opportunity to speak earlier today, and I agree with her report. I guess the only thing to add in addition is we have discussed -- and we discussed this the last time before your Honor -- a settlement conference before your Honor, which both of our clients seem to be willing to do, on the condition that clients be there in person, which we understand is a requirement of your rules --

THE COURT: Yes.

MR. SCHER: -- in any event, as well as we discussed giving an offer back and forth, which also is part of your rules and required.

THE COURT: Correct.

MR. SCHER: There is some mid-January, at least on -- I think on both of our clients' parts, some times that they're unavailable, so we were hoping you might be able to give us a couple of dates in either late January into February that work, and we could then go back and see what works and get back to you, if that is acceptable to you.

THE COURT: Yes. I'm glad to hear that you're talking about an early resolution. My calendar's pretty full, actually, in January. So what typically works best

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is that we pick a date that works for counsel; and then if your clients absolutely can't make it, then you write to me. Because I do have a lot of dates even already filled in February. Do you think that you -- you'll need a full day for this, right?

MS. THORNE: I expect so. Part of the complicating factor there is that most of my clients only speak Japanese.

THE COURT: Right.

MS. THORNE: And so we'll need to have a translator, which slows things down a little bit.

THE COURT: Yes.

MS. THORNE: Would you like us to sort of get together offline and come up with a few different dates to send you, or would you --

THE COURT: Hang on one second.

Okay, so what my deputy is saying is February 22nd is a full day that's open. Hang on.

MR. SCHER: Is February 20th President's Day, which I think -- I don't know if -- I don't have my phone on me. I don't know if there's a --

THE CLERK: Yes, the Court's closed that day. It's a Monday; it's the 20th, yes.

THE COURT: So that's not a good week for --

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MR. SCHER: That week may be problematic.

THE COURT: Okay. So that may be why I have that date open. I can do the 28th the whole day. It looks like I don't have any other whole days. Let me just see here.

MR. SCHER: I believe that's fine for me. Again, I would have to check with my clients, but I imagine they would be able to make themselves available.

MS. THORNE: That works for me, as well.

THE COURT: Okay. So let's -- I'm going to schedule it for the 28th for the whole day. Write to me as soon as possible if that does not work. You'll need to -- plaintiffs' counsel will need to arrange for the translator to be here. And how many people in the plaintiffs' group are you anticipating will be here?

MS. THORNE: I would anticipate we will have four lawyers and I think probably three client representatives.

THE COURT: Okay. And what about for defense side?

MR. SCHER: I imagine two lawyers and maximum three clients.

THE COURT: Okay. All right. So that's fine. We can accommodate that here. And I think -- normally I have a three-page limit on the premediation statement. But it might help to have slightly more pages, I think.

MR. SCHER: Five?

THE COURT: Five pages. Again, I don't have any stake in the matter, so you don't need to convince me of anything. The purpose of the mediation statement is really to key in on the key leverage points for settlement discussion and to hone in on damages. If there's a difference of opinion about a particular point of law or a particular fact or a particular method of analyzing damages, it will be helpful for me to understand that. And if there's anything you want to attach that you want me to take a look at, I can do that in advance of the conference. But that's really the purpose of it, rather than an advocacy piece, to really help me focus in on those key issues that each side will be, you know, wanting to raise and discuss in the settlement context. So it's a little bit different purpose than a brief.

And then I do encourage you to try to narrow the gap -- I think we talked about this last time -- as much as possible before you get to me. So if you can have multiple exchanges of numbers, that is great. You're not restricted to just one demand and one counter. So I encourage you to narrow that gap and to have a dialogue to understand what the key points of disagreement are for purposes of settlement so that we can focus in and use the time

1 effectively during the settlement conference.

2 And I think I said before that I don't require any
3 opening statements by the lawyers. That's usually not that
4 productive, I find. We can certainly talk together, if
5 that would be useful during the course of the day; but
6 usually I'm talking separately with each side.

7 Your clients are, of course, welcome to talk
8 themselves during the conference, if they want. And when
9 we meet here, I'll go over the procedures for the benefit
10 of your respective clients before we go into breakout
11 sessions. Okay?

12 Any questions about that process?

13 MR. SCHER: I only had one question -- and this
14 may be in your rules, and I apologize; I can go back and
15 look. Do you want the mediation statements to be ex parte?

16 THE COURT: Yes. They're ex parte. Sometimes
17 parties choose to exchange them. I don't object to that,
18 but I find that it's usually better for ex parte because
19 you can tell me if there's some kind of impediment or
20 something that you want me to know just for my ears only.

21 Let me see what else I wanted to talk about. If
22 there's any -- I mean, so this is primarily a contract
23 dispute; I don't know if there would be any kind of unusual
24 terms to an agreement here, other than just exchange of
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money. But if there are any terms or business terms or anything of that sort, I think it's important for counsel to have a discussion about that, what you would be expecting in terms of provisions in any kind of agreement, just so that you can think through some of those issues in advance of the conference. Particularly if people are coming from far away, I want to make the best use of the day as possible. So I would ask that you think about that, particularly if they're unusual terms. I'm not talking about, you know, the run-of-the-mill confidentiality or something like that, but you know what I mean.

Any other questions that you all have?

MS. THORNE: No, your Honor.

MR. SCHER: No, your Honor.

THE COURT: Okay. All right, so I think that we've discussed everything, then. Is there anything else that plaintiffs' counsel would like to raise?

MS. THORNE: Not for plaintiffs, no.

THE COURT: And what about defense?

MR. SCHER: No, your Honor. Thank you.

THE COURT: Okay. Good. So I'll look forward to seeing you in February. And I hope that I can help you resolve this case. And, in the meantime, Happy Holidays.

(Whereupon, the matter is recessed.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of GMO Gamecenter USA, Inc. et al v. Whinstone US, Inc., Docket #22-cv-05974-JPC-KHP, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature *Carole Ludwig*
Carole Ludwig

Date: December 16, 2022